

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KEVIN KEENEY, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

KERI KEENEY,

Respondent-Appellant,

and

JEREMY KEENEY,

Respondent.

In the Matter of KEVIN KEENEY, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JEREMY KEENEY,

Respondent-Appellant,

and

KERI KEENEY,

Respondent.

UNPUBLISHED

April 22, 2010

No. 293958

Montcalm Circuit Court

Family Division

LC No. 2009-000382-NA

No. 293959

Montcalm Circuit Court

Family Division

LC No. 2009-000382-NA

Before: OWENS, P.J., and SAWYER and O'CONNELL, JJ.

PER CURIAM.

In these consolidated appeals, respondents appeal as of right from an order terminating their parental rights to Kevin Keeney (DOB 5/1/09),¹ pursuant to MCL 712A.19b(3)(m) (rights to other children voluntarily terminated following the initiation of proceedings). We affirm.

On or about October 2, 2008, respondents' parental rights to three other children, whose ages were two, three and almost five, were voluntarily terminated following initiation of proceedings. In January 2009, pregnant with twins, respondent mother contacted Montcalm Child Protective Services to inquire what she should do so that she did not lose her parental rights to the babies. It was recommended that respondents complete previously recommended services. According to the caseworker, she advised that if there were substantial changes respondents would have a better chance of keeping the twins. Respondents followed up on the recommendations; however, the twins went into foster care upon their release from the hospital, and termination of parental rights was sought. In essence, it was revealed that respondents had received substantial services before their rights to their other children were terminated, but that they had failed to benefit from the services offered.

Respondent mother first argues that in this anticipatory neglect case, the proofs regarding prior neglect of her children had to be related to the admissions made as a basis for the previous termination of parental rights. She therefore asserts that a motion in limine to restrict the proofs accordingly should have been granted. We review this evidentiary ruling for an abuse of discretion, *Chmielesski v Xermac, Inc*, 457 Mich 593, 614; 580 NW2d 817 (1998); we find no such abuse.

In *In re Dittrick Infant*, 80 Mich App 219; 263 NW2d 37 (1977), this Court noted that a finding of anticipated neglect could be based on allegations of abuse of another child. The *Dittrick* Court stated that such a finding would not require that a finding of past neglect of a second child already have been made. See *id.* at 222. Evidence of how another child was treated, even if not the subject of a previous admission or factual finding, would have some tendency to prove how a parent would treat a future child. It would therefore be relevant, MRE 401, and admissible, MRE 403.

Respondent mother next argues that a statutory ground for termination was not established. However, her argument on this issue is more pertinent to whether termination was in the child's best interests. Under MCL 712A.19b(3)(m), all that had to be established was that "[t]he parent's rights to another child were voluntarily terminated following the initiation of proceedings under section 2(b) of this chapter or a similar law of another state." It is undisputed

¹ Kevin's twin died during the course of these proceedings.

that respondents voluntarily terminated their parental rights to their other three children after proceedings commenced.

Respondent father argues that his rights to procedural due process were violated because he pursued services based on the misrepresentation that he would have a better chance at keeping the infants if he continued counseling, took another parenting class, and had appropriate housing and appropriate supplies for the babies. He maintains that this was fundamentally unfair. Whether proceedings have complied with a party's right to due process is a question of constitutional law that we review de novo. *In re Rood*, 483 Mich 73, 91; 763 NW2d 587 (2009). However, this issue was not preserved and is therefore reviewed for plain error affecting substantial rights. *In re Williams*, 286 Mich App 253; ___ NW2d ___ (2009). Preliminarily, the caseworker testified that she said respondents would have a "better chance" of keeping the babies if there were "changes that were substantial." There is no evidence that respondents were told they would get to keep their babies if they did pursue recommended services. However, even if they were misinformed, defendant has not pointed to any due process denial. See *In re Rood*.

Next, respondents challenge the trial court's best interest determination. We review this determination under a "clearly erroneous" standard. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). To be clearly erroneous, a decision must be more than maybe or probably wrong. *In re Sours*, 459 Mich 624, 633; 593 NW2d 520 (1999).

MCL 712A.19b(5) provides:

If the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.

In addressing best interests, the court in essence found that respondents had not significantly benefited from previous services provided and there was little likelihood that they would sufficiently benefit in the near future. The court recapped testimony indicating that there was a common theme with previous referrals to protective services that involved cussing, hitting, crying, and slapping of children. Further, the court noted that while services were being provided to respondents, a child was twice left unattended in water, resulting in one child having to be revived after drowning in a bathtub. The court also noted testimony establishing that respondents did not benefit from services offered between 2006 and October 2008, that services to be provided had been exhausted, and that more resources were provided to respondents than was usual. The court found it particularly significant that after having been provided an extended course of individualized services, the conclusion was that respondents had not learned how to be better parents. The court found it laudatory that respondents had sought out services after the voluntary termination of their parental rights, but noted there was no evidence that the endeavors were successful. The failure to benefit from years of services was a compelling indicator that respondents would not be able to timely benefit from future services so that they

could properly care for this child. Accordingly, we find no clear error in the determination that it was in the best interests of the child to terminate respondents' parental rights.

Affirmed.

/s/ Donald S. Owens
/s/ David H. Sawyer
/s/ Peter D. O'Connell